

Message Text

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73-63

ORIGIN OPIC-01

INFO OCT-01 SS-14 ADP-00 ARA-08 EB-03 L-02 NSC-10 NSCE-00

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R 232026 Z APR 73

FM SECSTATE WASHDC

TO AMEMBASSY SANTIAGO

INFO AMEMBASSY BUENOS AIRES

C O N F I D E N T I A L STATE 076145

LIMDIS

FROM OPIC

E. O. 11652: GDS

SUBJ: DOW CHEMICAL EXPROPRIATION CLAIM, CONTRACTS NOS.
5930 AND 5932

REF: A. BUENOS AIRES 2738; B. SANTIAGO 1535

1. AS FORESHADOWED BY BENABLE STATEMENTS REPORTED IN REF A
DOW CHEMICAL CO OFFICIALS (DARGER, HOME OFFICE LAWYER, MIQUEL,
WASHINGTON REP, CASTELEIRO, LATIN AMERICA REGIONAL LAWYER,
AND ORREGO, CHILEAN COUNSEL) STATED DURING MEETING WITH OPIC
ON APR 19 THAT DOW IS RELUCTANT TO RESUME NEGOTIATIONS WITHOUT
A FORMAL INVITATION FROM THE GOC AND WITHOUT ADVANCE KNOWLEDGE
OF WHAT THE GOC INTENDS TO PROPOSE. THE DOW OFFICIALS POINTED
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OUT THAT AT THE CONCLUSION OF THE NOV 1972 MEETINGS, FLORES
SAID THAT THE GOC WOULD CONTACT THEM WHEN IT WAS READY TO RESUME
NEGOTIATIONS.

2. THE DOW OFFICIALS POINTED OUT THAT THE PETRODOW PLANT IS NOT FUNCTIONING. THEY SAID THAT INCOMPETENT PERSONNEL PLACED IN CHARGE OF OPERATIONS BY THE GOC HAD BYPASSED SAFETY DEVICES CAUSING CHEMICALS IN THE PIPING SYSTEM TO SOLIDIFY SO THAT THE PLANT IS USELESS. THEY SAID THAT IT WOULD BE NECESSARY TO CUT AWAY THE PLUGGED- UP SECTIONS WITH ACETYLENE TORCHES AND THAT IT WOULD TAKE \$1 MILLION AND THE BETTER PART OF A YEAR TO GET THE PLANT BACK INTO OPERATION. THEY OBSERVED THAT WITH THE PLANT SHUT- DOWN, CHILE WILL SOON FEEL EFFECTS OF A SHORTAGE OF PLASTIC CONTAINERS, E. G. FOR MILK DISTRIBUTION. ONE OF THE REASONS FOR ESTABLISHING PETRODOW WAS TO MAKE UP FOR CHILE' SHORTAGE OF PAPER PRODUCTS AND BOTTLES USED FOR CONTAINERS AND PACKAGING.

3. SETTING ASIDE FOR THE MOMENT ALL POLITICAL PROBLEMS, THERE WOULD STILL REMAIN THE FOLLOWING PRACTICAL PROBLEMS TO BE SOLVED BEFORE PETRODOW COULD BE PLACED IN OPERATION:

A. A LOAN OF ABOUT \$1 MILLION WOULD BE REQUIRED TO FINANCE REPAIRS.

B. DOW TECHNOLOGY WOULD BE REQUIRED TO EFFECT REPAIRS. MANY OF THE ESSENTIAL COMPONENTS IN THE PETRODOW COMPLEX ARE PROTECTED BY DOW PATENTS AND SECRET PROCESSES, AND MANUFACTURERS OF THESE COMPONENTS (ALL OF WHOM ARE LOCATED IN THE U. S.) WILL SUPPLY REPLACEMENT PARTS ONLY WITH DOW' S AUTHORIZATION. THERE ARE NO OTHER SOURCES OF SUPPLY, ACCORDING TO THE DOW OFFICIALS.

C. IN ORDER TO REPAIR THE PLANT AND GET IT BACK ON STREAM, DOW WOULD NEED THE LAID- OFF CHILEAN SUPERVISORS AND TECHNICIANS AND WOULD HAVE TO HAVE MANAGEMENT CONTROL. IN ORDER TO MAKE THE PLANT ECONOMICALLY VIABLE THE NEW WORKERS HIRED BY THE GOC WOULD HAVE TO BE LAID- OFF.

4. THE POLITICAL PROBLEMS IN CHILE MAKE SOLUTIONS TO THE PRACTICAL PROBLEMS ALMOST UNSURMOUNTABLE. HAVING BEEN INTERVENED (AND IN THEIR EYES, EXPROPRIATED), DOW IS NOT ABOUT TO LEND ANOTHER CONFIDENTIAL

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\$1 MILLION TO THE PROJECT, NOR IS DOW GOING TO MAKE THEIR TECHNOLOGY AVAILABLE WITHOUT CONTROL OF THE PROJECT AND SUBSTANTIAL CONTINUING BENEFIT FLOWING TO THEM FROM THE PROJECT. THUS, EVEN IF THE GOC HAD THE \$1 MILLION, OBTAINING THE NECESSARY REPLACEMENT PARTS TO REPAIR THE DAMAGE TO PETRODOW WOULD BE DIFFICULT IF NOT IMPOSSIBLE WITHOUT DOW' S COOPERATION. FINALLY, TO GET THE GOC TO REVERSE ITSELF ON PETRODOW PERSONNEL, TO HIRE THOSE FIRED AND FIRE THOSE HIRED (THE LATTER BEING UP SUPPORTERS) WOULD ALSO BE NEXT TO IMPOSSIBLE.

5. THERE IS ALSO AN ORGANIZATIONAL PROBLEM AT DOW: THE COMPANY IS ESTABLISHED ON THE BASIS OF REGIONAL AUTONOMY. SCHORNSTEIN, WHO LED THE DOW DEL TO THE NOV 1972 MEETINGS IN

SANTIAGO, IS HEAD OF DOW' S LATIN AMERICA REGION AND MAKES THE DECISIONS ON CHILE. THUS, WE WERE INFORMED BY DARGER THAT EVEN IF SOMEONE FROM THE HEAD OFFICE IN MIDLAND, MICHIGAN WENT TO SANTIAGO, IT WOULD BE FOR APPEARANCES ONLY, WITH SCHORNSTEIN CONTINUING TO CALL THE SHOTS. WHILE IT DID NOT COME OUT IN SO MANY WORDS, THERE WAS EVIDENCE OF RESENTMENT THAT THE GOC OR OPIC SHOULD TRY TO GO OVER THE HEADS OF THE LA REGIONAL PERSONNEL IN HANDLING THE CHILE EXPROPRIATION CLAIM.

6. THE DOW PERSONNEL LEFT THE CLEAR IMPRESSION THAT HENCEFORTH THEIR PRIMARY CONCERN IS PERFECTING THEIR OPIC CLAIM. IF THE OCT 19, 72 DATE OF THE GOC INTERVENTION OF PETRODOW IS ESTABLISHED AS THE DATE OF EXPROPRIATION, AND IF THE PATTERN OF GOC CONTROL OVER THE PROJECT CONTINUES, THEN EXPROPRIATORY ACTION UNDER THE PROVISIONS OF DOW' S OPIC CONTRACTS WOULD OCCUR ON OCT 19, 73. DOW IS AWARE OF ITS OBLIGATION UNDER SECTION 2.12 OF THE CONTRACTS TO PRUSUE AND PRESERVE ANY AND ALL ADMINISTRATIVE OF JUDICIAL REMEDIES, BUT PREFERENCES TO HAVE WRITTEN INSTRUCTIONS FROM OPIC SPECIFYING EACH STEP THAT IT SHOULD TAKE. MEANWHILE DOW HAS MADE PRELIMINARY APPLICATION TO OPIC FOR COMPENSATION, ALLEGING AN INSURED LOSS OF \$8,969,452.47, AND HAS REQUESTED THAT OPIC COMMENCE CLAIMS PROCESSING NOW INCLUDING AUDIT OF DOW' S BOOKS AND RECORDS. DOW ALSO REQUESTED THAT OPIC MAKE AN EARLY DETERMINATION THAT EXPROPRIATORY ACTION HAS OCCURRED WITHOUT WAITING FOR THE EXPIRATION OF THE USUAL ONE YEAR WAITING PERIOD. THE DOW REPS WERE INFORMED DURING THE MEETING THAT OPIC DECLINES TO MAKE SUCH AN EARLY DETERMINATION. IT IS EVIDENT THAT DOW DEFINITELY
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DOES NOT WANT THE PETRODOW PROJECT RETURNED TO THEM IN ITS PRESENT DAMAGED, UNMANAGEABLE CONDITION. DOW IS PREPARED TO NEGOTIATE IN OPIC' S BEHALF PROVIDED CLEAR INSTRUCTIONS ARE GIVEN. IT DOES NOT PARTICULARLY WANT TO SEND ANYONE SENIOR TO SCHORNSTEIN TO MEET WITH MILLAS AS PROPOSED IN REF. B.

7 OPIC BELIEVES IT IS PREMATURE TO PUSH DOW INTO A HIGH LEVEL MEETING UNTIL VIABLE OPTIONS HAVE BEEN DEVELOPED. IF RESPONSE TO FLORES INQUIRY OF APR 9 CONSIDERED NECESSARY, THE AMBASSADOR COULD ASK FOR (A) AN AGENDA OF WHAT THE GOC PROPOSES TO DISCUSS WITH DOW, (B) THE NAMES OF GOC REPS AS SUGGESTED IN REF A, BUT DEFER A REQUEST FOR A FORMAL INVITATION UNTIL OPIC HAS HAD AN OPPORTUNITY TO EXPLORE AND DEVELOP AN ACCEPTABLE STRATEGY WITH DOW. IN THIS CONNECTION, OPIC' S ASSISTANT GENERAL COUNSEL FOR CLAIMS, COOPER, EXPECTS TO MEET WITH VENABLE AND EMB OFFICERS IN SANTIAGO DURING THE EARLY PART OF MAY. EMB CONCURRENCE OF TDY WILL BE REQUESTED WHEN COOPER' S ITINERARY HAS BEEN FIRMED- UP.

GDS. PORTER

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